

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE SIDE JURISDICTION  
WRIT PETITION NO.6826 OF 2006

Shri B.K.Deshmane & Ors. .. Petitioners

Vs.

Sau. Chhaya Ashokrao Shirsath  
& Ors. .. Respondents

--

Shri P.N.Joshi for the Petitioners.

Shri K.Y. Mandlik for the Respondent No.1.

--

CORAM : R.M.S.KHANDEPARKAR, J

DATED : 13th October, 2006

**P.C.**

1. Heard. The petitioners challenge the judgment and order dated 25th July, 2006 passed by the School Tribunal, Nashik Region, Nashik, whereby the appeal filed by the respondent No.1 has been allowed and the petitioners have been directed to reinstate the Respondent No.1 in their high school and to pay her full back wages.

2. The challenge to the impugned judgment and order is on the ground that the Respondent No.1 was absorbed in terms of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Services )

Regulation Act, 1977, hereinafter called as "the said Act", on she being declared as surplus, in the Respondent No.2 School. It is the contention on behalf of the petitioners that the absorption was purely on temporary basis and since already the vacancy has arisen in the school in which she declared surplus, she was directed to be repatriated to the said school. The fact that her absorption in the petitioners' school was purely on temporary basis was totally ignored by the School Tribunal.

3. In spite of the repeated query from the Court, the learned advocate has not been able to point out any provision of law either under the MEPS Act or the Rules framed thereunder or any other statute which could permit absorption on temporary basis if the teacher declared as surplus in terms of the provisions of Section 5 of the said Act in spite of the fact that the absorption had been pursuant to the order of the Education Officer. It is not in dispute that once a teacher is declared as surplus, the absorption of such teacher can be directed by the Education Officer in another school where the vacancy arises and wherein such teacher can be accommodated. It is not in dispute that in the case in hand, there was a direction by the Education Officer for absorption of

the Respondent No.1 in the petitioners' school. It is further sought to be contended that the correspondence which followed between the petitioner and the Education Officer could reveal that the absorption of the Respondent No.1 in the petitioners' school was purely on temporary basis. Any amount of correspondence or any commitment on behalf of the Education Officer even if it is made contrary to the provisions of law can be enforceable in law. Once, under the law, the Section 5 of the said Act provides that the Education Officer can direct absorption of the surplus teachers in another school where the vacancy is available, and in accordance with the provisions of Section 5, the Respondent No.1 was directed to absorb in the petitioners' school, by no stretch of imagination, it can be said that such absorption was made on temporary basis. Merely because the petitioner management thought it fit to consider such absorption being on temporary basis, in the absence of statutory provision empowering the management to grant such temporary absorption, the absorption of the Respondent No.1 in the petitioners' school cannot be considered as on temporary basis. Viewed from this angle, no fault could be found with the impugned order whereby the School Tribunal had directed reinstatement of the Respondent No.1 in the

petitioners' school.

4. It is true that in terms of the Rule 26(4) of the Maharashtra Employees of Private Schools (Conditions of Service ) Rules, 1981, hereinafter called as "the said Rules", when the post is revived or additional posts for the same subject are created in the school from which the teacher was retrenched on being declared as surplus, certainly such teacher who has been absorbed in another school have right of option in terms of Rule 26(5) of the said Rules to claim repatriation in the school from which he or she was retrenched. However, it is an option to be exercised by such teacher and it cannot be forced upon the teacher by the management of the petitioners' school wherein the teacher has been absorbed.

5. For the reasons stated above, therefore, no fault can be found in the impugned order, nor it requires interference in exercise of power in writ jurisdiction under Article 227 of the Constitution. The impugned order does not disclose any jurisdictional error. Hence, the petition fails and is hereby dismissed.

